

**IOWA DEPARTMENT OF NATURAL RESOURCES**  
**ADMINISTRATIVE CONSENT ORDER**

**IN THE MATTER OF:**

**RON MOORE  
4620 1<sup>ST</sup> AVE, NE  
CEDAR RAPIDS, IA 52402**

**UST NO. 1986010053  
LUST NO. 7LTT77**

**ADMINISTRATIVE  
CONSENT ORDER  
2008-UT-01**

**TO: Ron Moore  
2224 Grand Ave, SE  
Cedar Rapids, IA 52403**

**I. SUMMARY**

The Iowa Department of Natural Resources (Department) and Ron Moore hereby agree to the following Administrative Consent Order (Order). Mr. Moore has excavated the area of concern located at the above referenced site in lieu of performing a corrective action design report (CADR). The parties agreed to this arrangement to expedite the cleanup process. However, because of extended delays in finalizing the soil excavation, the parties have agreed that an administrative penalty of \$3,000 will be paid to the order of the Iowa Department of Natural Resources. See Sections IV and V for more details.

Any questions regarding this Order should be directed to:

**Relating to technical requirements:**

Brian Jergenson  
Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034  
Ph: 515/242-6490

**Relating to legal requirements:**

Tamara Mullen, Attorney  
Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034  
Ph: 515/281-8934

**II. JURISDICTION**

The parties hereby agree that this Order is issued pursuant to Iowa Code sections 455B.474(1)(f)(11) and 455B.476, which authorize the Director to issue any order necessary to secure compliance with the Iowa Code Division IV, Part 8 and Department rules contained in Chapter 567 Iowa Administrative Code (I.A.C.) 135. Iowa Code

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section 455B.109 and Department rules in Chapter 567 I.A.C. 10 authorize the Director to assess administrative penalties up to \$10,000.

**III. STATEMENT OF FACTS**

The Department and Mr. Moore hereby agree to the following statement of facts:

1. Mr. Moore was the registered owner of 5 petroleum underground storage tanks (USTs) located at 4620 1<sup>st</sup> Ave NE, Cedar Rapids, IA. The USTs were removed in October 1990.
2. Mr. Moore is the primary responsible party for this site due to the fact that he was the last owner and operator of the tanks prior to their removal in 1990.
3. At all times since 1972, including when contamination was discovered, Allen and Martha Kane have been the deed holders of the property.
4. A Tier 2 site assessment report was submitted to the Department on Nov. 19, 2002 by Mr. Moore. The Department reviewed the Tier 2 site assessment report and classified the site as high risk for soil leaching to groundwater due to the presence of benzene at 7.15 ppm, which is above the benzene action standard of .54 ppm. The Department notified Mr. Moore of the high risk classification. A corrective action design report (CADR) was to be submitted by March 21, 2003 but was postponed by agreement to June 29, 2003. The Department never received the CADR.
5. On Aug 19, 2003, the Department sent a overdue letter requiring the CADR to be submitted within 10 days, but it was never received. A final notice concerning the CADR was sent on April 12, 2004.
6. No further action was taken by either party until July 18, 2005 when a corrective action meeting was arranged. Mr. Moore and the Department agreed that Mr. Moore would excavate the contaminated soil and submit an overexcavation (OE) report detailing the excavation process instead of the CADR. Accordingly, in October 2005, Mr. Moore sought and was granted permission by Allen Kane to enter the property for testing and excavation purposes.
7. Mr. Scott Behrends, Mr. Moore's consultant, contacted the Department in April 2006 to inform the Department that the Linn County landfill would not be able to accept the OE soil until August or September 2006. Accordingly, the OE was delayed until that time.
8. In July 2007, the Department sent a final notice concerning the OE report. This letter requested either the OE Report be submitted or that Mr. Moore contact the Department to provide a time frame for when it would be finished. No response of any kind was ever received.

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9. The site was formally referred to the Department's Legal Services Bureau on September 6, 2007 based upon inactivity and a failure to communicate.
10. Immediately after hearing of the legal referral, Mr. Behrends contacted the Department on September 13, 2007 to state that he would provide final details on the OE to the Department by September 23, 2007.
10. The Department did not hear back from Mr. Behrends until October 15, 2007. At that time he stated the OE was scheduled for October 22, 2007.
11. The OE was finally completed in late October 2007, and the OE report was received by the Department in November 2007.

#### IV. CONCLUSIONS OF LAW

The parties hereby agree that the following conclusions of law are applicable to this matter:

1. Iowa Code chapter 455B, Division IV, Part 8 (sections 455B.471 - 455B.479) establishes the Underground Storage Tank (UST) program. Section 455B.472 declares that the release of regulated substances, including petroleum products, from USTs constitutes a threat to the public health and safety and to the natural resources of the state. Iowa Code section 455B.474 authorizes the Environmental Protection Commission to adopt rules related to release detection and prevention, financial responsibility, tank closure, site assessment, risk classification, and corrective action applicable to all owners and operators of USTs. The Commission has adopted such rules at Chapters 567 I.A.C. 135 and 136.
2. Iowa Code section 455B.471(6) defines "owner" of USTs. These tanks were in service after July 1, 1985. Mr. Moore is an owner as defined and responsible for taking the actions agreed upon in this Order.
3. Iowa Code section 455B.471(5) defines an "operator" of USTs as "a person in control of, or having responsibility for, the daily operation of the underground storage tank." Mr. Moore is an operator as defined and responsible for taking the actions agreed upon in this Order.
4. "Petroleum" or its constituent parts is a "regulated substance" as defined at Iowa Code sections 455B.471(7) and (8). A "release" of a regulated substance has occurred at the site as defined at Iowa Code section 455B.471(9).
5. Department rule 567 I.A.C. 135.14 defines levels of contamination which constitute Department action levels. Benzene contamination greater than .54 ppm requires corrective action. Owners and operators of USTs are required to conduct a Tier 1 assessment under Department rules 567 I.A.C. 135.8 et seq. when petroleum

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contamination above a Department action level is documented. See 567 I.A.C. 135.9(2). Depending on the results of the Tier 1 analysis and certain specified conditions in the rules, parties may be required to conduct a Tier 2 site assessment. See 567 I.A.C. 135.9(2) and 135.10. Due to the presence of benzene at the site, Mr. Moore was required to submit a Tier 2 to the Department and he has done so.

6. Based on the Tier 2 risk assessment, the Department classifies the site as high risk, low risk or no action required. Sites that are classified as high risk are required to submit a corrective action design report (CADR) within sixty (60) days of notice of the classification notice. See 567 I.A.C. 135.12(3)"d". Interim monitoring reports are required to be submitted to the Department at least annually for all sites classified as high risk. See 135.12(3)"e". A site may be re-classified from high risk to low risk classification if during the course of taking corrective action conditions justify it. A site monitoring report must be submitted requesting reclassification. Pursuant to Mr. Moore's submitted Tier 2 assessment, this site was classified as high risk due to the presence of benzene contamination at 7.15 ppm.

7. Unless specifically limited by rule or an imminent hazard exists, a Tier 3 site assessment may be submitted in lieu of a Tier 2 or a CADR in accordance with Department rule 567 I.A.C. 135.11.

8. An authorized form of corrective action for high risk sites includes OE of contaminated soils pursuant to 567 I.A.C. 135.15(4). OE involves removing up to one foot of the contaminated soils surrounding the tank pit. The excavated soil must be disposed of in accordance with 567 I.A.C. 15(3)"e". A report must be submitted to the Department within 30 days of completion of the laboratory analysis of the soil, and must contain a dimension drawing showing the depth and area of the excavation prior to and after overexcavation. See 567 I.A.C. 15(4)"c".

9. All corrective action must be conducted by a certified groundwater professional in accordance with 567 I.A.C. 135.8(2).

10. The Department has been seeking site closure since 2000. Mr. Moore failed to ever submit a CADR to the Department, repeatedly failed to respond to Department letters and phone calls, and after agreeing to complete an OE in September 2005, did not actually do so until late October 2007 – after a formal legal referral had been submitted to the Department's Legal Services Bureau based upon inactivity and a failure to communicate.

## V. ORDER

THEREFORE, the Department hereby orders and Mr. Moore agrees to the following:

Mr. Moore shall pay to the order of the Iowa Department of Natural Resources an administrative penalty of \$3,000 within 30 days of receipt of this Order.

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**VI. PENALTY**

1. Iowa Code section 455B.477 authorizes the assessment of civil penalties in Iowa District Court of up to \$5,000 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision.

2. Iowa Code sections 455B.476 and 455B.109 authorize the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties. Sec 567 I.A.C. 10. Pursuant to this rule, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with a penalty.

**ECONOMIC BENEFIT:** Due to the fact that remediation work at this site was eligible for 100% cost coverage by the Iowa Comprehensive Underground Storage Tank Fund (FUND), Mr. Moore's economic benefit is nominal and the Department is deferring an assessment based on this factor. The FUND is a monetary fund created in the state treasury to assist owners and operators of USTs to comply with relevant rules and regulations when certain technical and financial conditions are met. See Iowa Code section 455G.3.

**GRAVITY:** Before soil excavation was finalized in October 2007, this site had been in an unabated high risk condition for several years. The CADR originally required for this site was 54 months overdue. The soil excavation alternative had originally been agreed to in September 2005, making Mr. Moore's October OE 25 months overdue. These delays prevented a high risk condition from being properly addressed. Therefore, \$1,500 is assessed for this factor.

**CULPABILITY:** Mr. Moore was given several notices regarding his need to comply with Department rules. He was sent a final notice which specifically cautioned that failure to comply could result in legal action and the assessment of administrative penalties in July 2007. Mr. Moore's delays caused this site to remain unremediated since 2003. Thus, \$1,500 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

Iowa Code section 455B.476, and 561 I.A.C. 7.5(1), as adopted by reference by 567 I.A.C. chapter 7, authorize a written notice of appeal to the Environmental Protection Commission. This Order is entered into knowingly by and with the consent of Mr. Moore. By signing this Order all rights to appeal this Order are waived.

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**VIII. NONCOMPLIANCE**

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.477.

Ron Moore  
RON MOORE

Dated this 2nd day of JANUARY, 2008

Richard A. Leopold  
RICHARD A. LEOPOLD, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 9 day of Jan, 2008

Ron Moore: Field Office 1; Elaine Douskey; Brian Jergenson; Tamara Mullen; V.D.